

## HOUSE BILL NO. 303

INTRODUCED BY G. GUTSCHE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE BOARD OF ENVIRONMENTAL REVIEW'S AUTHORITY TO REQUIRE A WRITTEN UNDERTAKING FOR CERTAIN AIR QUALITY PERMIT APPEALS; AMENDING SECTIONS 75-2-211 AND 75-2-218, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-2-211, MCA, is amended to read:

**"75-2-211. (Temporary) Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;
- (g) requirements and procedures for suspension, modification, and revocation of permits by the department;

1 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
2 enforceable measures necessary to ensure compliance with those limitations and requirements;

3 (i) requirements and procedures for permit modification and amendment; and

4 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
5 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance  
6 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator  
7 notify the department in advance of each change in location.

8 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
9 quality permit system.

10 (5) Department approval of an application to transfer a portable emission source from one location to  
11 another is exempt from the provisions of 75-1-201(1).

12 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
13 appropriate applications.

14 (7) The department shall require that applications for permits be accompanied by any plans,  
15 specifications, and other information that it considers necessary.

16 (8) An application is not considered filed until the applicant has submitted all fees required under  
17 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
18 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
19 an application that the application is incomplete and fails to list the reasons why the application is considered  
20 incomplete, the application is considered filed as of the date of the purported filing.

21 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of  
22 an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1  
23 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

24 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the  
25 department prepares the environmental impact statement;

26 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state  
27 agency other than the department has been designated by the governor as lead agency for preparation of the  
28 environmental impact statement; or

29 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
30 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement

1 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

2 (b) If an application does not require the preparation of an environmental impact statement, is not  
3 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42  
4 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt  
5 of a filed application, as provided in subsection (8), of its approval or denial of the application.

6 (c) If an application does not require the preparation of an environmental impact statement and is  
7 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the  
8 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its  
9 approval or denial of the application.

10 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an  
11 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the  
12 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed  
13 application, as provided in subsection (8).

14 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that  
15 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
16 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required  
17 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications  
18 within the time period provided for in 75-2-215(3)(e).

19 (f) The time for notification may be extended for 30 days by written agreement of the department and  
20 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.  
21 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's  
22 agent.

23 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the  
24 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
25 the department to act in a timely manner.

26 (10) When the department approves or denies the application for a permit under this section, a person  
27 who is jointly or severally adversely affected by the department's decision may request a hearing before the  
28 board. The request for hearing must be filed within 15 days after the department renders its decision and must  
29 include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana  
30 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this

1 subsection.

2 (11) (a) The department's decision on the application is not final until 15 days have elapsed from the  
3 date of the decision.

4 (b) The filing of a request for hearing does not stay the department's decision. However, the board may  
5 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

6 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

7 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
8 requesting the stay.

9 ~~\_\_\_\_\_ (c) Upon granting a stay, the board may require a written undertaking to be given by the party~~  
10 ~~requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees~~  
11 ~~if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use~~  
12 ~~the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.~~

13 (12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written  
14 notice that its application is considered filed pursuant to subsection (8) may:

15 (i) for a temporary power generation unit or units with a total electrical generation capacity of not more  
16 than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the  
17 department's issuance of a permit under this section.

18 (ii) for a temporary power generation unit or units with a total electrical generating capacity of 10  
19 megawatts or less, construct and operate the unit or units.

20 (b) The construction or operation of a temporary power generation unit or units described in subsection  
21 (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units  
22 continues after a department decision to deny the permit application becomes final as provided in this section.

23 (c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation  
24 unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the  
25 department's deadline any additional information that is necessary to process the permit application.

26 (ii) The operation of a permit applicant's temporary power generation unit or units described in  
27 subsection (12)(a) may not violate ambient air quality standards.

28 (d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire  
29 no later than 2 years from the date that the department received the permit application and must require removal  
30 of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for

1 permanent operation has been issued.

2 (13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on  
3 draft air quality permits for applications that:

4 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

5 (b) are subject to the requirements of 75-2-215; or

6 (c) require the preparation of an environmental impact statement.

7 (14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or  
8 creation of:

9 (i) general permits covering multiple similar sources; or

10 (ii) other permits covering multiple similar sources.

11 (b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the  
12 permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005--sec.  
13 4, Ch. 588, L. 2001.)

14 **75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use.** (1) The  
15 board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit  
16 issued under this part.

17 (2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction,  
18 installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the  
19 board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent  
20 or control the emission of air pollutants, the owner or operator shall file with the department the appropriate  
21 permit application on forms available from the department.

22 (3) The permit program administered by the department pursuant to this section must include the  
23 following:

24 (a) requirements and procedures for permit applications, including standard application forms;

25 (b) requirements and procedures for submittal of information necessary to determine the location,  
26 quantity, and type of emissions;

27 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

28 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
29 agencies, as appropriate;

30 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

1 (f) procedures for the transfer of permits;

2 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
3 department;

4 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
5 enforceable measures necessary to ensure compliance with those limitations and requirements;

6 (i) requirements and procedures for permit modification and amendment; and

7 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
8 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance  
9 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator  
10 notify the department in advance of each change in location.

11 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
12 quality permit system.

13 (5) Department approval of an application to transfer a portable emission source from one location to  
14 another is exempt from the provisions of 75-1-201(1).

15 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
16 appropriate applications.

17 (7) The department shall require that applications for permits be accompanied by any plans,  
18 specifications, and other information that it considers necessary.

19 (8) An application is not considered filed until the applicant has submitted all fees required under  
20 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
21 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
22 an application that the application is incomplete and fails to list the reasons why the application is considered  
23 incomplete, the application is considered filed as of the date of the purported filing.

24 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of  
25 an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1  
26 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

27 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the  
28 department prepares the environmental impact statement;

29 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state  
30 agency other than the department has been designated by the governor as lead agency for preparation of the

1 environmental impact statement; or

2 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
3 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement  
4 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

5 (b) If an application does not require the preparation of an environmental impact statement, is not  
6 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42  
7 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt  
8 of a filed application, as provided in subsection (8), of its approval or denial of the application.

9 (c) If an application does not require the preparation of an environmental impact statement and is  
10 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the  
11 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its  
12 approval or denial of the application.

13 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an  
14 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the  
15 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed  
16 application, as provided in subsection (8).

17 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that  
18 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
19 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required  
20 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications  
21 within the time period provided for in 75-2-215(3)(e).

22 (f) The time for notification may be extended for 30 days by written agreement of the department and  
23 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.  
24 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's  
25 agent.

26 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the  
27 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
28 the department to act in a timely manner.

29 (10) When the department approves or denies the application for a permit under this section, a person  
30 who is jointly or severally adversely affected by the department's decision may request a hearing before the

board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

~~Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.~~

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

**Section 2.** Section 75-2-218, MCA, is amended to read:

**"75-2-218. Permits for operation -- application completeness -- action by department -- application shield -- review by board.** (1) An application for an operating permit or renewal is not considered



1 filed until the department has determined that it is complete. An application is complete if all fees required under  
2 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted.  
3 A complete application must contain all of the information required for the department to begin processing the  
4 application. If the department fails to notify the applicant in writing within 60 days after submittal of an application  
5 that the application is incomplete and fails to list the reasons why the application is considered incomplete, the  
6 application is considered filed on the date of the department's receipt of the application. The department may  
7 request additional information after a completeness determination has been made. The department shall adopt  
8 rules that contain criteria for use in determining both when an application is complete and when additional  
9 information is required after a completeness determination has been made.

10 (2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall,  
11 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for  
12 an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of  
13 filing. Failure of the department to act in a timely manner does not constitute approval or denial of the  
14 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
15 the department to act in a timely manner.

16 (3) The board may by rule provide for a transition schedule for both the submittal to the department of  
17 initial applications for operating permits by existing sources and action by the department on these initial permit  
18 applications. The board may require that one-third of all operating permit applications required for existing  
19 sources be submitted within the first calendar year after the adoption of rules implementing an operating permit  
20 program under 75-2-217.

21 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's  
22 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and  
23 complete application for an operating permit renewal, the expiration of the applicant's existing operating permit  
24 is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the  
25 expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The  
26 applicant is not entitled to the protection of this subsection if the delay in final action by the department on the  
27 application results from the applicant's failure to submit in a timely manner information requested by the  
28 department to process the application.

29 (5) Except as provided in subsection (8), if the department approves or denies an application for an  
30 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any

1 person that participated in the public comment process required under 75-2-217(7) may request a hearing before  
2 the board. The request for a hearing must be filed within 30 days after the department renders its decision and  
3 must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana  
4 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this  
5 subsection.

6 (6) (a) Except as provided in subsection (8), the department's decision on any application is not final  
7 until 30 days have elapsed from the date of the decision.

8 (b) Except as provided in subsection (8), the filing of a request for hearing does not stay the  
9 department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice  
10 and opportunity for an informal hearing, that:

11 (i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or  
12 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
13 requesting the hearing.

14 ~~(c) Upon granting a stay, the board may require a written undertaking to be given by the party~~  
15 ~~requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees~~  
16 ~~if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use~~  
17 ~~the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.~~

18 (7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to  
19 suspend, revoke, modify, or amend an operating permit issued under this section.

20 (8) The denial by the department of an application under 75-2-217 and this section is not subject to  
21 review by the board or judicial review if the basis for denial is the written objection of the appropriate federal  
22 agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

23 (9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is  
24 considered to be compliance with the requirements of this chapter only if the permit expressly includes those  
25 requirements or an express determination that those requirements are not applicable. This subsection does not  
26 apply to general permits provided for under 75-2-217."

27  
28 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

29 - END -